THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.21354 of 1997

DATED: 14.02.2007

BETWEEN:

The Executive Engineer, Panchayat Raj
Division, Zilla Parishad, Cuddapah
District at Cuddapah .. Petitioner

And

The Presiding Officer/Chairman
Labour Court, Ananthapur and another .. Respondents.

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.21354 of 1997

ORDER:

Aggrieved by the order of the Industrial Tribunal-Cum-Labour Court, Anantapur, in M.P.No.15 of 1990 dated 28.11.1995, the Zilla Parishad, Kadapa, is before this Court.

In the proceedings under Section 33-C (2) of the Industrial Disputes Act (for short 'the Act'), the Tribunal held that the workman was entitled for the difference of salary at Rs.500/- per month from 24.09.1968 to 07.04.1974 and directed the petitioner herein to pay the difference of salary to the second respondent.

In the counter affidavit filed before the Tribunal, it is the specific case of the petitioner herein that the deceased-workman was temporarily promoted with effect from 24.09.1968 vide proceedings Rc.No.2946/E5/73 dated 11.10.1973 by the Chairman, Zilla Parishad, but this Order had not been implemented on the ground that he was not entitled for such post and the time scale mentioned in the order was not given. The Tribunal went into the merits and held that since the said order was not cancelled, and in view of the conflicting contentions in the recitals in the counter and in the evidence of M.W.1, the second respondent was entitled for difference in salary.

It must not be lost sight of that proceedings under Section 33-C (2) of the Act are in the nature of execution proceedings. As held in

Central Inland Water Transport Corporation Ltd. Vs. The Workmen[1]**,** it is only on the basis of a pre-determined right or a right flowing from a statutory provision, can a claim be made for payment of the amounts due, pursuant to such a right, in proceedings under Section 33-C (2) of the Act. The Tribunal had acted beyond its jurisdiction under section 33-C (2) of the Act, which is in the nature of execution proceedings, in examining the merits of the controversy and in construing the validity of the action of the respondents in not giving effect to the order of promotion dated 11.10.1973 giving retrospective promotion to the deceased-workman on 24.09.1968. Whether the order of the Chairman, Zilla Parishad, dated 11.10.1973 was a valid order or not could not have been examined in proceedings under Section 33-C (2) of the Act, nor could any relief had been granted on the basis of such an order.

Sri M.V. Pratap Reddy, learned counsel for the second respondent, would submit that since the workman had already died and he was represented even before the Tribunal by his widow, the petitioner may seek to recover the amount withdrawn by the legal representatives of the deceased-workman pursuant to the interim directions of this Court. This Court, by an order in WPMP.No. 26009 of 1997 in W.P.No.21354 of 1997 dated 10.12.1997, granted interim suspension of the order of the Tribunal on condition that the petitioner deposits the difference in salary at Rs.500/- per month from the date of issue of the proceedings dated 11.10.1973 within four weeks and, on a vacate stay petition being filed, this Court by order dated 09.11.1998 permitted the second respondent in the Writ Petition to withdraw 50% of the amount deposited without furnishing security.

Sri P.Raghavendra Reddy, learned counsel for the petitioner, would submit that pursuant to the interim orders of this Court dated 10.12.1997, a sum of Rs.2,956/- had been deposited before the Tribunal and 50% thereof would constitute around Rs.1,500/-.

I see no reason to permit the petitioner herein to now recover the said amount of Rs.1,500/-, which the widow of the deceased-workman had withdrawn pursuant to the interim orders of this Court .

The Writ Petition is allowed subject to the condition that the petitioner herein shall not recover the amount withdrawn by the widow of the deceased-workman, the second respondent, pursuant to the interim orders passed by this Court. No costs.

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(RAMESH RANGANATHAN,J)

14.02.2007
vv

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[1] AIR 1974 SC 1604